

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3  
4 ESTEBAN HERNANDEZ,

5 Plaintiff,

Case No. 2:18-cv-01449-MMD-CLB

6 v.  
7 HOWELL, et al.,

8 Defendants.

**ORDER**

9  
10 Before the court is Plaintiff Esteban Hernandez's ("Hernandez") motion for leave  
11 to file an amended complaint (ECF No. 37). Defendants Romeo Aranas, James  
12 Dzurenda, and Jerry Howell (collectively referred to as "Defendants"), filed a limited  
13 opposition to the motion (ECF No. 38), and Hernandez replied (ECF No. 48). Also  
14 before the court is Hernandez's motion for clarification (ECF No. 45). No response was  
15 filed. For the reasons discussed below, the motion for leave to file an amended  
16 complaint (ECF No. 37) and the motion for clarification (ECF No. 45) are granted.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

18 Hernandez is an inmate in the custody of the Nevada Department of Corrections  
19 ("NDOC"). On August 3, 2018, Hernandez filed a civil rights complaint under 42 U.S.C.  
20 § 1983 for events that occurred while Hernandez was incarcerated at the Southern  
21 Desert Correctional Center ("SDCC"). (ECF No. 5.) On December 2, 2019, the District  
22 Court entered a screening order on Hernandez's complaint (ECF No. 4), allowing  
23 Hernandez to proceed on an Eighth Amendment deliberate indifference to serious  
24 medical needs claim against Defendants based on denial of treatment for hepatitis C  
25 ("hep-C"). (See *id.* at 6.) The District Court dismissed, with prejudice, all claims against  
26 Defendants NDOC and SDCC. (*Id.*) The District Court also dismissed, without  
27 prejudice, an Eighth Amendment violation based on failure to inform Hernandez that he  
28 had tested positive for hep-C and conduct follow-up testing. (*Id.*)

Around the same time Hernandez filed his complaint, many other individuals in the custody of the NDOC filed similar actions alleging that NDOC's policy for treating hep-C amounts to deliberate indifference in violation of the Eighth Amendment. (See ECF No. 6.) Thus, the court consolidated numerous actions, including Hernandez's case, for the purpose of conducting consolidated discovery. (See ECF No. 7.) Hernandez opted to be excluded from the class action, but his case remained stayed through the pendency of the class action. (See ECF No. 10.) On September 2, 2020, the stay was lifted in this case. (ECF No. 12.)

On December 11, 2020, Hernandez filed an amended complaint, without first seeking leave of court. (ECF No. 32.) Thus, the court struck the improperly filed complaint, with leave to re-file the amended complaint with an accompanying motion requesting to do so as required in accordance with LR 15-1(a). (ECF No. 34.) On December 21, 2020, Defendants filed their notice of acceptance of service for the original complaint. (ECF No. 33.) Defendants filed their answer on December 31, 2020. (ECF No. 35.) On January 12, 2021, Hernandez filed his motion for leave to file an amended complaint (ECF No. 37), along with his proposed amended complaint (ECF No. 37-1). Defendants filed a limited opposition to Hernandez's motion for leave to amend complaint (ECF No. 38) and Hernandez replied (ECF No. 48).

## II. **LEGAL STANDARD**

Federal Rule of Civil Procedure 15(a)(2) instructs that “[t]he court should freely give leave [to amend a pleading] when justice so requires,” and there is a strong public policy in favor of permitting amendment. *Bowles v. Reade*, 198 F.3d 752, 757 (9th Cir. 1999). The Ninth Circuit has made clear that Rule 15(a) is to be applied with “extreme liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (*per curiam*). Under Rule 15(a), courts consider various factors, including: (1) bad faith; (2) undue delay; (3) prejudice to the opposing party; (4) the futility of the amendment; and (5) whether the plaintiff has previously amended his complaint. See *id.* at 1052. The factors do not weigh equally; as the Ninth Circuit has explained, prejudice receives

1 greatest weight. See *id.* Defendants bear the burden of establishing prejudice, and  
2 absent its presence or a “strong showing” under the other factors, there is a presumption  
3 in favor of permitting amendment. *Id.* (citing *DCD Programs, Ltd. v. Leighton*, 833 F.2d  
4 183, 186-87 (9th Cir. 1987)).

5 When considering prejudice, the court may weigh against the movant the  
6 amended pleading’s great alteration of the litigation’s nature and its effect of requiring an  
7 entirely new course of defense. *Morongo Band of Mission Indians v. Rose*, 893 F.2d  
8 1074, 1079 (9th Cir. 1990). Alone, such alteration is not fatal. *Id.* In contrast, futility  
9 “alone can justify the denial of a motion for leave to amend.” *Nunes v. Ashcroft*, 375  
10 F.3d 805, 809 (9th Cir. 2003). Futility arises when the amendment is legally insufficient,  
11 *Miller v. Rykoff-Sexon, Inc.*, 845 F.3d 209, 214 (9th Cir. 1988), or “where the amended  
12 complaint would . . . be subject to dismissal[.]” *Steckman v. Hart Brewing, Inc.*, 143 F.3d  
13 1293, 1298 (9th Cir. 1998).

14 **III. DISCUSSION**

15 **A. Motion for Leave to File Amended Complaint**

16 Hernandez moves to amend his complaint to add two additional defendants, Dr.  
17 Henry Landsman and Medical Director Michael Minev, to his Eighth Amendment  
18 deliberate indifference claim. (See ECF Nos. 37, 37-1.) In Defendants’ limited  
19 opposition, they first incorrectly state that Hernandez’s motion is improper because he  
20 did not attach a proposed amended complaint. (ECF No. 38 at 1.) Defendants only  
21 other argument is that amendment would be futile because Hernandez “has not alleged  
22 facts sufficient to show that he was subjected to a deficient medical care sufficiently  
23 severe to meet the objective prong of the Eighth Amendment” or “that Defendants were  
24 aware of any such condition and were deliberately indifferent to his plight.” (*Id.* at 3-4.)  
25 Further, Defendants request that if the court is inclined to grant the motion, that the  
26 amended complaint be screened.

27 Having reviewed Hernandez’s proposed amended pleading, the court finds that  
28 the motion for leave to an amended complaint (ECF No. 37) should be granted, in its

1 entirety as it is not made in bad faith, would not cause undue delay to the litigation, is not  
2 prejudicial to defendants, and it is Hernandez's first amended pleading. See *Eminence*  
3 *Capital, LLC*, 316 F.3d at 1052. Further, the court finds that Hernandez's amended  
4 complaint is not futile, because, liberally construed, he provides sufficient allegations that  
5 Defendants Landman and Minev were personally involved or aware of his hep-C but  
6 denied treatment in violation of the Eighth Amendment. (See ECF No. 37-1.)<sup>1</sup>

7 As to Defendants request that the amended complaint be screened, the court  
8 declines to do so. 28 U.S.C. § 1915A requires screening of a prisoner's complaint  
9 "before docketing, if feasible or, in any event, as soon as practicable after docketing." 28  
10 U.S.C. § 1915A(a). The screening provision does not require a court, either explicitly or  
11 implicitly, to screen every time a plaintiff seeks to amend the complaint. To be perfectly  
12 clear, courts in this district screen complaints and amended complaints at the pre-  
13 answer stage. In cases where the court dismisses the initial complaint with leave to  
14 amend, the court would then screen the proposed amended complaint to determine what  
15 claims may proceed and whether a defendant is compelled to respond. This practice  
16 falls within the Prison Litigation Reform Act's mandate for "early judicial screening."  
17 *Jones v. Bock*, 549 U.S. 119, 223 (2007); see also *Nordstrom v. Ryan*, 762 F.3d 903,  
18 906, 907 & n.1 (9th Cir. 2014) (characterizing screening under § 1915A as the "pre-  
19 answer screening stage"). The decision to engage in post-answer court screening is  
20 made on a case-by-case basis. The present case, which consists of a single deliberate  
21 indifference count, with only a few defendants, is not the type of case that warrants post-  
22 answer screening. Hernandez is simply seeking leave to add two new defendants to the  
23 single claim and screening is unnecessary.

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27 <sup>1</sup> To the extent Hernandez is attempting to name NDOC and SDCC as defendants  
28 in his amended complaint, those defendants were already dismissed, with prejudice, as  
they are not proper defendants. (ECF No. 4.)

1           **B. Motion for Clarification**

2           Hernandez also filed a "Motion for Clarification", which consists of a series of  
3 questions Hernandez asks the court to address. (See ECF No. 45.) Defendants did not  
4 respond. The court will grant the motion, as many of Hernandez's questions are  
5 addressed by the present order. As to Hernandez's questions concerning appointment  
6 of counsel and the docket sheet for this case, the Clerk of the Court shall send  
7 Hernandez one copy of the docket sheet and one copy of the court's order (ECF No.  
8 44), denying his motion for appointment of counsel.

9           **IV. CONCLUSION**

10          Based upon the foregoing, **IT IS ORDERED** that Hernandez's motion for leave to  
11 file an amended complaint (ECF No. 37) is **GRANTED**;

12          **IT IS FURTHER ORDERED** that the Clerk of Court **FILE** the amended complaint  
13 (ECF No. 37-1), which is the operative complaint in this case;

14          **IT IS FURTHER ORDERED** that within twenty-one (21) days of the date of entry  
15 of this order, the Attorney General's Office shall file notice advising the court and  
16 Hernandez of whether it can or cannot accept service on behalf of defendants  
17 Landsman and/or Minev. If the Attorney General's Office cannot accept service on  
18 behalf of Landsman and/or Minev, the Office shall file, under seal, but shall not serve  
19 Hernandez, the last known addresses of Landsman and/or Minev, if it has such  
20 information. If the last known addresses of Landsman and/or Minev are a post office  
21 box, the Attorney General's Office shall attempt to obtain and provide the last known  
22 physical address. If service cannot be accepted for Landsman and/or Minev, Hernandez  
23 shall file a motion requesting issuance of a summons, specifying a full name and  
24 address for Landsman and/or Minev. If the Attorney General has not provided last-  
25 known-address information, Hernandez shall provide the full name and address for  
26 Landsman and/or Minev;

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1           **IT IS FURTHER ORDERED** that Defendants shall file and serve an answer or  
2 other response to the amended complaint within sixty (60) days from the date of this  
3 order;

4           **IT IS FURTHER ORDERED** that Hernandez's motion for clarification (ECF No.  
5 45) is **GRANTED**; and,

6           **IT IS FURTHER ORDERED** that the Clerk of Court shall **SEND** Hernandez a copy  
7 of the docket sheet and a copy of the order on appointment of counsel (ECF No. 44).

8           **DATED:** April 26, 2021

  
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**UNITED STATES MAGISTRATE JUDGE**

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